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Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

COALITION OF ARIZONA/NEW MEXICO)
COUNTIES FOR STABLE ECONOMIC GROWTH,)
et al.,)

Plaintiffs,)

v.)

KENNETH SALAZAR, in his official capacity as)
Secretary of the Interior; ROWAN GOULD, in his)
official capacity as Acting Director of the Fish and)
Wildlife Service; UNITED STATES DEPARTMENT)
OF THE INTERIOR; UNITED STATES FISH AND)
WILDLIFE SERVICE,¹)

Defendants.)

CENTER FOR BIOLOGICAL DIVERSITY,)

Defendant-Intervenor.)

CENTER FOR BIOLOGICAL DIVERSITY,)

Plaintiff,)

v.)

No. 1:07-cv-00876-JEC-WPL

**FEDERAL DEFENDANTS'
MOTION FOR
VOLUNTARY REMAND**

No. 1:08-cv-00657-JEC-WPL

¹ The captions have been altered to reflect the new Secretary of the Interior and the Acting Director of the Fish and Wildlife Service. See Fed. R. Civ. Pro. 25(d).

1 KENNETH SALAZAR, in his official capacity as)
 2 Secretary of the Interior; ROWAN GOULD, in his)
 3 official capacity as Acting Director of the Fish and)
 4 Wildlife Service; UNITED STATES DEPARTMENT)
 OF THE INTERIOR; UNITES STATES FISH AND)
 WILDLIFE SERVICE,)

5 Defendants,)

6 COALITION FOR ARIZONA/NEW MEXICO)
 7 COUNTIES FOR STABLE ECONOMIC GROWTH)
 and NEW MEXICO CATTLE GROWERS')
 8 ASSOCIATION,)

9 Defendant-Intervenors.)
 _____)

10 Federal Defendants Kenneth Salazar, Rowan Gould, the United States Department of the
 11 Interior and the United States Fish and Wildlife Service (collectively the "Federal Defendants")
 12 hereby move this Court for a voluntary remand of the final rule entitled *Endangered and*
 13 *Threatened Wildlife and Plants; Designation of Critical Habitat for the Spikedace (*Meda fulgida*)*
 14 *and the Loach Minnow (*Tiaroga cobitis*)*, 72 Fed. Reg. 13356 (Mar. 21, 2007) ("Final Rule") in
 15 order to reconsider the rule in light of an investigative report that was recently issued by the
 16 Department of the Interior's Inspector General entitled "The Endangered Species Act and the
 17 Conflict between Science and Policy." As explained in the accompanying memorandum, the
 18 ability to remand the Final Rule lies well within the Court's equitable powers. On remand, the
 19 United States Fish and Wildlife Service intends to conduct further rulemaking and render new
 20 determinations regarding critical habitat for the Spikedace and the Loach Minnow.

21 Pursuant to Local Rule 7.1(a), Federal Defendants consulted with the parties in the above-
 22 captioned cases in order to ascertain their respective positions on Federal Defendants' Motion for
 23 Voluntary Remand. Plaintiff/Intervenor Center for Biological Diversity ("CBD") stated that it
 24 does not oppose Federal Defendants' motion. Plaintiffs/Defendant-Intervenors Coalition of
 25

1 Arizona/New Mexico Counties for Stable Economic Growth and the New Mexico Cattle Growers'
2 Association ("Cattle Growers") stated that while they took no position on the appropriateness of
3 remand at this time, they oppose a remand without vacatur.

4 Federal Defendants ask that the Court grant their Motion for Voluntary Remand for the
5 reasons set forth in the accompanying memorandum.

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7 Respectfully submitted this February 2, 2009.

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9 JOHN C. CRUDEN
10 Acting Assistant Attorney General
11 JEAN E. WILLIAMS, Chief
12 LISA L. RUSSELL, Assistant Chief

13 /s/ Erik E. Petersen
14 ERIK E. PETERSEN, Trial Attorney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February, 2009, I electronically filed the foregoing with the Clerk of the U.S. District Court of New Mexico using the CM/ECF system, which will send a Notice of Electronic filing to the counsel of record.

/s/ Erik E. Petersen

ERIK E. PETERSEN

Counsel for Federal Defendants